No. 01-745

DEC 28 2001

IN THE

Supreme Court of the United States

DONALD E. SULLIVAN,

Petitioner,

v.

RAYTHEON COMPANY, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether the court of appeals correctly ruled that it was not an abuse of discretion for the district court to deny petitioner's claim for penalties under ERISA.

II. Whether the court of appeals correctly ruled that petitioner's claim for retaliation under the Massachusetts worker's compensation law was preempted by the Labor Management Relations Act.

III. Whether the court of appeals correctly ruled under ERISA that respondent Metropolitan Life Insurance Company's termination of petitioner's benefits was not arbitrary and capricious.

IV. Whether the court of appeals correctly ruled that petitioner's state law claims of handicap and age discrimination failed because the evidence was insufficient for him to prove a prima facie case of discrimination based on his repeated and unequivocal claims of total disability.

LIST OF PARTIES

The parties named in the caption, Donald Sullivan, Raytheon Company, Raytheon Employees Disability Trust, and Metropolitan Life Insurance Company were the only parties to the proceedings before the court of appeals and the district court. Raytheon Company has no parent companies, and no publicly held company owns ten percent or more of its stock. Metropolitan Life Insurance Company is wholly owned by MetLife, Inc., which is a publicly held company.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents Raytheon Company ("Raytheon"), Raytheon Employees Disability Trust ("Trust"), and Metropolitan Life Insurance Company ("MetLife") respectfully oppose the petition for writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit.

OPINIONS BELOW

As stated by petitioner.

JURISDICTION

As stated by petitioner.

STATUTES INVOLVED

Respondents provide the following supplementation to petitioner's description of statutes involved.

Mass. Gen. Laws ch. 152, § 75B(3):

> In the event that any right set forth in this section is inconsistent with an applicable collective bargaining agreement, such agreement shall prevail. . . .

STATEMENT OF THE CASE

Factual Background

Petitioner began his employment as a security guard with Raytheon in 1965. (Pet. App. 2). Between 1971 and 1990, he suffered seven industrial accidents that caused injuries to his neck, lower back, and legs. (*Id.*). Petitioner sought medical treatment for some of these injuries and occasionally missed work. (*Id.*). Shortly after petitioner's seventh accident in 1990, his absenteeism from work increased. (*Id.*). After giving him a written warning in June 1990 and imposing a suspension for abuse of Raytheon's sick leave policy in September 1991, Raytheon terminated petitioner's employment on March 31, 1992. (*Id.* at 2-3).

Petitioner filed a grievance pursuant to the collective bargaining agreement between Raytheon and his union, the Raytheon Guards Association, challenging his termination. (*Id.* at 3). After a hearing on August 10, 1995, the arbitrator found that petitioner had been terminated without just cause. (*Id.*). However, noting that "on a current and prospective basis, [petitioner] is not able to work," the arbitrator ordered petitioner reinstated retroactive to March 31, 1992 on "inactive employment status" so that petitioner could apply for disability benefits under Raytheon's long term disability plan ("LTD plan"). (*Id.*). Shortly after the arbitrator's decision, petitioner wrote to

Raytheon and requested information about the LTD plan so that he could apply for benefits. (*Id.*).

Under the LTD plan, benefits are payable for twenty-four months for an employee who is "fully disabled"; they are payable after that to an employee who is "totally disabled." (*Id.* at 23). In statements provided to plan participants, employees are informed that they are fully disabled if "because of a sickness or an injury you cannot do your job." (*Id.* at 3). An employee is totally disabled if "because of sickness or injury: (a) you can not do your job; and (b) you can not do any other job for which you are fit by your education, your training, or your experience." (*Id.*).

Petitioner submitted an application for long term disability benefits in November 1995. (*Id.*). MetLife, the claims administrator responsible for determining a participant's eligibility under the plan, denied his claim in March 1996. (*Id.*). MetLife stated that there was "inadequate evidence of a disabling condition that would prevent him from performing his occupation as a Guard from April 1, 1992 through the present." (*Id.* at 3-4). Petitioner appealed the denial of benefits to MetLife. (*Id.* at 4).

Petitioner also applied for worker's compensation benefits. (*Id.*). On August 4, 1994, an administrative law judge for the Massachusetts Department of Industrial Accidents found that petitioner was partially disabled as of March 22, 1992, and totally disabled as of October 12, 1994.

(*Id.*). Petitioner received worker's compensation benefits until 1998, when he exhausted his entitlement to them. (*Id.*).

Petitioner requested reinstatement to Raytheon by letter dated June 18, 1996. (*Id.*). In that letter, he stated that either he was totally disabled, in which case he should receive long term disability benefits, or he was not disabled, in which case he sought reinstatement to a position with or without reasonable accommodation. (*Id.*). By letter dated July 10, 1996, Raytheon advised petitioner that it would not consider reinstating him until after MetLife considered petitioner's appeal from its denial of his claim for benefits. (*Id.*). Petitioner filed a charge of discrimination with the MCAD on October 9, 1996. (*Id.*)

On October 17, 1997, MetLife determined that petitioner was fully disabled for the first twenty-four months of his disability through April 30, 1994 because he was not capable of performing his job as a security guard, and thus entitled to benefits during that time. (*Id.* at 4-5). In this respect, MetLife's decision of October 1997 differed from its denial of benefits in March 1996. (*Id.* at 5). However, MetLife affirmed its previous determination that petitioner was not totally disabled because he was not disabled from all occupations for which he was fit by his training or experience. (*Id.*). Accordingly, MetLife terminated his benefits. (*Id.*). Petitioner's appeal of that determination to MetLife was denied. (*Id.*).

In addition to his allegations of total disability in connection with his application for long term disability benefits and his claim for worker's compensation benefits, petitioner alleged during depositions in 1994 and 2000 that he was totally disabled. (*Id.* at 35).

Proceedings Below

Respondent provides the following supplementation to petitioner's description of the proceedings below.

The proceedings in the district court were as stated by petitioner. In describing the proceedings in the court of appeals, however, petitioner incorrectly states that the district court had jurisdiction based on diversity jurisdiction. (Pet. 12). The district court had jurisdiction based on a federal question. (Pet. 5). Petitioner also incorrectly states that the court of appeals was required to apply Massachusetts law with respect to the standard for summary judgment. (Pet. 13). Finally, petitioner incorrectly states that the court of appeals found facts, drew inferences in favor of the parties moving for summary judgment, and misapplied Massachusetts law. (Pet. 13).

REASONS FOR DENYING THE PETITION

I. THE COURT OF APPEALS DECISION AFFIRMING THE DISTRICT COURT'S DISCRETIONARY REFUSAL TO AWARD PENALTIES UNDER ERISA WAS NOT IN CONFLICT WITH DECISIONS OF OTHER CIRCUITS AND WAS CORRECT.

The second question set forth in the petition incorrectly states that the decision of the court of appeals conflicts with the decisions of other circuits on the issue of when a court may impose discretionary penalties under the disclosure requirements of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001 *et seq.* Specifically, petitioner here maintains that the court of appeals required that he, in order to recover penalties under 29 U.S.C. § 1132(c)(1), prove that he suffered prejudice or that the administrator acted in bad faith, while other circuits do not impose such a requirement. On the contrary, however, the court of appeals' decision here did not impose such a requirement on the petitioner and is entirely consistent with the law of other circuits.

The courts of appeals of other circuits consistently have held that plaintiffs seeking penalties under section 1132(c)(1) need not prove, as a necessary element of their claim, that they suffered prejudice as a result of an administrator's failure to provide plan documents. *See, e.g., Moothart v. Bell*, 21 F.3d 1499, 1506 (10th Cir.

1994) (noting general accord in circuits); *Godwin v. Sun Life Assurance Co. of Canada*, 980 F.2d 323, 327 and n.8 (5th Cir. 1992) (showing of prejudice not required by statute); *Harsch v. Eisenberg*, 956 F.2d 651, 662 (7th Cir.), *cert. denied*, *Bihler v. Eisenberg*, 506 U.S. 818 (1992) (same). It is equally well established, however, that a court may, in the exercise of its discretion, consider the issue of prejudice when determining whether to impose penalties. *Moothart*, 21 F.3d at 1506; *Godwin*, 980 F.2d at 327; *Harsch*, 956 F.2d at 662. Petitioner agrees with these statements of the law. (Pet. 16-17). The law in the First Circuit is the same, *Rodriguez-Abreu v. Chase Manhattan Bank*, 986 F.2d 580, 588 (1st Cir. 1993), as petitioner explicitly acknowledges. (Pet. 17).

The law that the court of appeals applied in this case is fully consistent with these decisions from other circuits and with prior case law in the First Circuit. In refusing to award penalties for respondents' alleged failure to provide plan documents, the district court considered petitioner's lack of proof that respondents acted in bad faith or that he was prejudiced by any nondisclosure. (Pet. App. 31-33). The district court did not, however, construe these two factors to be required elements of petitioner's claim. (*Id.*).

When affirming the district court's judgment, the court of appeals expressly agreed with petitioner's legal position, and then ruled that the

district court's decision was consistent with that position:

> We agree with Sullivan that showings of bad faith and prejudice are not necessary for a court to award penalties under § 1132(c)(1). . . . However, the district court did not require Sullivan to prove that Raytheon acted in bad faith or that he was prejudiced. Instead, the court appropriately cited the absence of those factors among the reasons for its decision not to award penalties.

(Pet. App. 19) (emphasis added). As a result, because the court of appeals' decision was consistent with the law of other circuits, there is no issue warranting this Court's review.

II. IN AFFIRMING THE DISTRICT COURT'S DISMISSAL OF PETITIONER'S CLAIM FOR RETALIATION UNDER THE MASSACHUSETTS WORKER'S COMPENSATION ACT, THE COURT OF APPEALS FOLLOWED THIS COURT'S LAW REGARDING PREEMPTION UNDER THE LABOR MANAGEMENT RELATIONS ACT.

In his complaint, petitioner alleged that Raytheon retaliated against him based on his claim for worker's compensation benefits, in violation of Mass. Gen. Laws ch. 152, § 75B(2). More specifically, he alleged that Raytheon retaliated

against him by refusing to reinstate him to his former position, which was a union position subject to a collective bargaining agreement. The statute under which petitioner brought his claim provides, in relevant part, "In the event that any right set forth in this section is inconsistent with an applicable collective bargaining agreement, such agreement shall prevail." Mass. Gen. Laws ch. 152, § 75B(3). In *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399 (1988), this Court held that "an application of state law is pre-empted by § 301 of the Labor Management Relations Act of 1947 only if such application requires the interpretation of a collective-bargaining agreement." *Id.* at 413. In this case, the court of appeals ruled that, because petitioner was a unionized employee subject to a collective-bargaining agreement, his claim required the interpretation of the agreement and therefore was preempted by section 301 of the LMRA. (Pet. App. 11-14). The court of appeals, therefore, followed this Court's holding in *Lingle*.

Moreover, the court of appeals' decision on this question was based on its interpretation of Mass. Gen. Laws ch. 152, § 75B(3), specifically whether claims under this statute require the interpretation of a collective bargaining agreement. Such a determination does not warrant this Court's attention, because this Court normally will not review a federal court's interpretation of state law. *Leavitt v. Jane L.*, 518 U.S. 137, 144 (1996). Departures from this practice have occurred only rarely, and only in exceptional cir-

cumstances, such as "blatant federal-court nullification of state law." *Id.*

III. THE COURT OF APPEALS CORRECTLY DETERMINED THAT RESPONDENT METLIFE DID NOT ABUSE ITS DISCRETION WHEN TERMINATING PETITIONER'S LONG TERM DISABILITY BENEFITS.

The court of appeals determined that respondent MetLife did not abuse its discretion when terminating petitioner's long term disability benefits. Petitioner does not contend that the court of appeals applied an improper standard; rather, he argues that the court misapplied the arbitrary and capricious standard of review. This ruling raises no compelling issues warranting the Court's attention. In effect, petitioner simply asks this Court to sit as the final arbiter of his claim for benefits by reviewing and analyzing his evidence of disability, even though two courts already have done so using the proper standard of review.

The court of appeals ruling that MetLife did not abuse its discretion was, in any event, correct. In terminating petitioner's long term disability benefits, MetLife reasonably relied on the opinion of an independent doctor that petitioner was not totally disabled. (Pet. App. 15-16). Petitioner's own treating doctor indicated that petitioner had some work capacity, and an independent medical examination was both inconclusive

and unreliable. (Pet. App. 16-17). Because MetLife's final determination was not arbitrary and capricious, the court of appeals properly upheld the district court's dismissal of petitioner's claim for benefits.

IV. THE COURT OF APPEALS APPLIED MASSACHUSETTS LAW, AND APPLIED IT CORRECTLY, IN RULING THAT PETITIONER WAS NOT QUALIFIED FOR THE POSITION HE SOUGHT AT RAYTHEON AND THEREFORE THAT HIS AGE AND DISABILITY DISCRIMINATION CLAIMS WERE PROPERLY DISMISSED.

Contrary to the petitioner's statement that the court of appeals failed to apply Massachusetts law, the court faithfully complied with *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938), which requires federal courts to apply a state's substantive law when adjudicating claims arising under that law. In considering petitioner's claims for age and disability discrimination under Mass. Gen. Laws ch. 151B, the court of appeals plainly recognized that Massachusetts law applied, as demonstrated by the court's explicit citation to that law. (Pet. App. 6, 9-10).

The court of appeals went on to apply that law correctly. With respect to his claim of handicap discrimination, Sullivan was required to prove as part of his prima facie case that he was qualified for the position to which he sought rein-

statement. *Beal v. Board of Selectmen of Hingham*, 419 Mass. 535, 541, 646 N.E.2d 131, 136 (1995); Mass. Gen. Laws ch. 151B, § 4(16) (extending protection only to "qualified handicap person"). Similarly, Sullivan was required to prove as part of his prima facie case of age discrimination that he was qualified for the position in question. *Powers v. H.B. Smith Co.*, 42 Mass. App. Ct. 657, 661, 679 N.E.2d 252, 255 (1997), *appeal denied*, 425 Mass. 1105, 682 N.E.2d 1362 (1997). The court of appeals ruled that there was insufficient evidence to prove these elements. Petitioner had made repeated and unequivocal statements, under oath, that he was totally disabled, and he pointed to no evidence to show how these statements were consistent with his ability to perform the job to which he sought reinstatement. (Pet. App. 6-10).

This ruling is consistent with decisions by Massachusetts courts. In *Beal*, the Massachusetts Supreme Judicial Court affirmed the dismissal of the disability discrimination claim of a plaintiff who had previously alleged, in the context of claims for disability retirement and social security benefits, that she was physically unable to perform her job. 419 Mass. at 543, 646 N.E.2d at 137-38. The plaintiff's sex discrimination claim was dismissed for the same reason. 419 Mass. at 544-45, 646 N.E.2d at 138. With respect to both claims, the plaintiff's allegations of total disability precluded her from proving a prima facie case of discrimination, because she could not prove that she was qualified for the job

in question. Because petitioner's case does not differ in any significant respect from *Beal*, his claims properly were dismissed. Based on its faithful adherence to Massachusetts law, the court of appeals complied with the mandate of the *Erie* doctrine. Therefore, the court of appeals ruling does not present any federal question and does not warrant this Court's review.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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